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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DILWORTH IP, LLC 2 CORPORATE DRIVE SUITE 206 TRUMBULL, CT 06611			HENRY, RODNEY M	
			ART UNIT	PAPER NUMBER
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			11/28/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/775,680	IRWIN, CHARLES F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	RODNEY HENRY	3682	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 February 2011.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 5) Claim(s) 1-75 is/are pending in the application.
- 5a) Of the above claim(s) 9-11,13-15,17,19,23,29-31,33-35,38,39,44 and 59 is/are withdrawn from consideration.
- 6) Claim(s) \_\_\_\_\_ is/are allowed.
- 7) Claim(s) \_\_\_\_\_ is/are rejected.
- 8) Claim(s) 1-8,12,16,18,20-22, 24-28, 32, 36, 37, 40-43, 45-58, 60-75 is/are objected to.
- 9) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 10) The specification is objected to by the Examiner.
- 11) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

1. The following is non-final office action on the merits. The Examiner acknowledges the Applicant's reply dated 10/20/2011.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claim 1, 2, 4-6, 8, 12, 16, 20-22, 24-26, 28, 32, 36, 48, 50, 53-58, 61-64, 66, 67, 68, 70, 71, and 73 are rejected under 35 U.S.C. 102(b) as being anticipated by Burk, Michael James (Burk) (US 20030074250).**

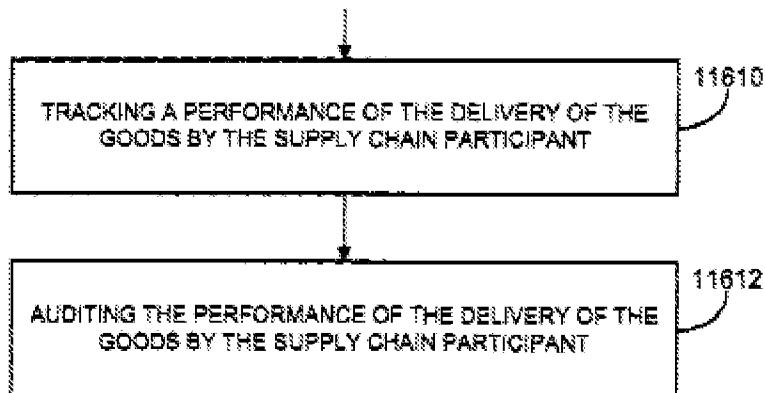
#### **As per Claim 1:**

Burk discloses a method carried out via an internet website for effectuating one or more incentive programs between two or more partners in a supply community which enables a first partner (also known as an "establishing partner") to establish financial consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period wherein the one or more participating partners, the performance indicators, the minimum level of performance required for each performance indicator, and the

financial consequence for each performance indicator are selected and specified by the establishing partner, the method including the steps of:

[1] sending invitations from a plurality of establishing partners via an internet website hosted on a server to one or more members of a supply community to become one or more participating partners in incentive programs;  
(see Burk paragraph 2218 via “select distributors are invited to participate in developing a new business relationship that focuses on capturing the available opportunities in supply chain and distribution management” and see Burk paragraph 2627 via “the management of the supply chain may include paying the selected distributors/suppliers rebates“ for incentives).

[2] for each incentive program, receiving via the internet website a selection of at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period for each participating partner;  
(see Burk paragraph 1772 via “Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time “, and FIG. 116 auditing and tracking performance of supply chain participant)



**FIG. 116**

[3] receiving via the internet website a minimum level of performance for each of the at least one performance indicators in each incentive program;  
(see Burk above)

[4] receiving via the internet website a financial consequence to motivate the at least one participating partner to achieve the minimum required level of performance in each incentive program;  
(see Burk paragraph 2627 via "the management of the supply chain may include paying the selected distributors/suppliers rebates").

receiving via the internet website acceptances of participation in a plurality of contemporaneous incentive programs from at least one member who thereby becomes a participating partner; and outputting from the internet website a financial credit or financial debit due to the each participating partner in each incentive program; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace.

(see Burk paragraph 600 via “FIG. 59 is a flowchart of a process 5930 for tracking the shipment of goods in a network-based supply chain management framework”. This invention deals with several types of supply chains, restaurant etc.. A restaurant franchise example involving shipping is White Castle, which has been known to ship burgers to college students).

### **Claim Rejections - 35 USC § 103**

**1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

As per Claim 2:

Burk discloses at least one participating partner is from a group of one or more partners where the group is defined by a common attribute that does not include the establishing partner.

(See Burk FIGS 1, 2. Since the invention describes franchises like restaurants etc. it is known that the establishing partner(s) will be owners and the franchisees will be restaurant operators as a common attribute).

As per Claim 4:

Burk discloses the establishing partner selects a group of at least one other partner and all partners in the selected group of partners share a common attribute.

(See Burk FIGS 1, 2. Since the invention describes franchises like restaurants etc. it is known that the establishing partner(s) will be owners and the franchisees will be restaurant operators as a common attribute).

As per Claim 5:

Burk discloses the establishing partner selects at least one other partner from more than one group of partners, each group having at least one other partner.

(See Burk FIGS 1, 2. Since the invention describes franchises like restaurants etc. it is known that the establishing partner(s) will be owners and the franchisees will be restaurant operators as a common attribute. Also franchises in a particular area can choose to cooperate by sharing surplus inventory during times of need for the benefit of the franchise name and brand).

As per Claims 6:

Burk discloses the financial consequence includes a financial reward favorable to the at least one participating partner when the required level of performance is achieved.

(see Burk paragraph 2627 via “the management of the supply chain may include paying the selected distributors/suppliers rebates”).

As per Claim 8:

Burk discloses the financial consequence is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit increment improvement in performance when the at least one participating partner

achieves and exceeds the minimum required level of performance on the at least one performance indicator.

(see Burk paragraph 2627 via “the management of the supply chain may include paying the selected distributors/suppliers rebates”. The reward/rebate can be less than or more than the cost savings realized by the establishing partner at the discretion of the partner).

As per Claim 12:

Burk discloses specifying the time or event count period of a selected performance indicator and designating the minimum required level of performance and the financial consequence for each selected performance indicator for each participating partner.

(see Burk paragraph 1772 via “Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time “, and FIG. 116 auditing and tracking performance of supply chain participant).

As per Claim 16:

Burk discloses increasing any favorable reward or reducing the minimum required level of performance for a selected performance indicator any time during the time or event count period for that incentive program.

(see Burk paragraph 1710 via “invoices may be automatically adjusted to account for the damaged/nonconforming goods“, as an example of lowered performance standards, i.e accounting for damaged/nonconforming goods).

As per Claim 20:

Burk discloses collecting and storing data necessary to calculate the selected performance indicators wherein the data quantitatively describes a product or service provided and the means of providing the product or service using selected attributes.

(see Burk paragraph 1772 via "Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time ", and FIG. 116 auditing and tracking performance of supply chain participant).

As per Claim 21:

A system for effectuating collaboration between one or many buyers and sellers, and their third party service providers in a supply community by operating an incentive program which enables an establishing partner to establish consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period wherein the other partners, the performance indicators, the minimum level of performance required for each performance indicator, and the consequences for each performance indicator are selected and specified by the establishing partner, the system comprising: means for inviting at least one member of the community to be a participating partner in at least one incentive program; means for the establishing participating partner to select at least one performance indicator for each participating partner and to specify the minimum aggregated measure of performance and a financial consequence for the at least one

selected performance indicator for a set of events defined by a time or event count period; means for the at least one member to accept a plurality of invitations and thus become at least one participating partner in a plurality of contemporaneous incentive programs; means for collecting and storing data necessary to calculate an aggregated measure of performance of the at least one participating partner on the at least one selected performance indicator; means for analyzing the collected and stored data to generate an aggregated measure of performance for the time or event count period; and means for determining the financial credit or financial debit due to each participating partner in each incentive program; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace.

(see claim 1 discussion).

As per Claim 22:

Burk discloses at least one participating partner is selected from a group of one or more partners where the group is defined by a common attribute and does not include the group of the establishing partner.

(see claim 2 discussion).

As per Claim 24:

Burk discloses the establishing partner selects a group of at least one other partner where the at least one other partner in the selected group of partners shares a common attribute.

(see claim 4 discussion).

As per Claim 25:

Burk discloses the establishing partner selects at least one other partner from more than one group of partners each group having at least one other partner. (see claim 5 discussion).

As per Claim 26:

Burk discloses the financial consequences is a financial reward favorable to the at least one participating partner.

(see claim 6 discussion)

As per Claim 28:

Burk discloses the financial consequence is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit improvement in performance when the at least one participating partner achieves and exceeds the minimum required level of performance on the at least one performance indicator.

(see claim 8 discussion).

As per Claim 32:

Burk discloses the establishing partner can establish the time or event count period of the selected performance indicators and designate the minimum required level of performance and the financial consequence for each selected performance indictor for at least one participating partner.

(see claim 12 discussion).

As per Claim 36:

Burk discloses the establishing partner may increase any favorable reward or reduce the minimum required level of performance for a specified performance indicator anytime during the time or event count period for that incentive program.  
(see claim 16 discussion).

As per Claim 48:

Burk discloses the establishing partner and participating partners are members of a transportation marketplace.

(see Burk paragraph 600 via “FIG. 59 is a flowchart of a process 5930 for tracking the shipment of goods in a network-based supply chain management framework”).

As per Claim 50:

Burk discloses at least one performance indicator measures performance of the participating party in relation to third parties.

(see Burk paragraph 2346 via “Coordinator shall have the sole and absolute right to designate methods, third party contractors and interpretation of performance audits”).

As per Claims 53-58, 61-64, 66, 67:

Claim 53: Burk discloses at least one participating partner is from a group of one or more partners where the group is defined by a common attribute that does not include the establishing partner.

(see claim 2 discussion).

Claim 54: Burk discloses at least one other partner from more than one group of partners, each group having at least one other partner.  
(see claim 5 discussion).

Claim 55: Burk discloses: the financial consequence includes a financial reward favorable to the at least one participating partner when the minimum required level of performance is achieved.  
(see claim 6 discussion).

Claim 56: Burk discloses: the financial consequence for a selected incentive is a financial reward that is less than or more than the net cost savings realized by the establishing partner for each unit increment improvement in performance when the at least one participating partner achieves and exceeds the minimum required level of performance on the at least one performance indicator.  
(see claim 8 discussion).

Claim 57: Burk discloses: specifying the time or event count period of a selected performance indicator and designating the minimum required level of performance and the financial consequence for each selected performance indicator for each participating partner.  
(see claim 12 discussion).

Claim 58: Burk discloses: increasing any favorable reward or reducing the minimum required level of performance for a selected performance indicator any time during the time or event count period for that incentive program.  
(see claim 16 discussion).

Claim 61: Burk discloses: the steps of: collecting and storing data necessary to calculate the selected performance indicators wherein the data quantitatively describes the product or service provided and the means of providing the product or service using selected attributes.  
(see Burk paragraph 1772 via “Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time “, and FIG. 116 auditing and tracking performance of supply chain participant)

Claim 62: Burk discloses: the establishing partner and participating partners are members of a transportation marketplace.  
(see Burk paragraph 600 via “FIG. 59 is a flowchart of a process 5930 for tracking the shipment of goods in a network-based supply chain management framework“. This invention deals with several types of supply chains, restaurant etc.. A restaurant franchise example involving shipping is White Castle, which has been known to ship burgers to college students).

Claim 63: Burk discloses: the at least one performance indicator measures performance of the participating party in relation to third parties.

(see Burk paragraph 2346 via “Coordinator shall have the sole and absolute right to designate methods, third party contractors and interpretation of performance audits”).

Claim 64: Burk discloses: outputting invitations from a plurality of establishing partners.

(see Burk paragraph 2218 via “select distributors are invited to participate in developing a new business relationship that focuses on capturing the available opportunities in supply chain and distribution management”).

Claim 66: Burk discloses: partners becoming participating partners comprise business units within a single business entity.

(see claim 2 discussion. It is known that a franchise establisher may choose to run a number of franchises themselves).

Claim 67: Burk discloses: an establishing partner, a participating partner and a third party partner all in a truckload transportation marketplace.

(see Burk paragraph 2346 via “Coordinator shall have the sole and absolute right to designate methods, third party contractors and interpretation of performance audits”).

As per Claim 68:

A system for effectuating collaboration between one or many buyers and sellers, and their third party service providers in a supply community by operating an incentive program which enables an establishing partner to establish consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period wherein the other partners, the performance indicators, the minimum level of performance required for each performance indicator, and the consequences for each performance indicator are selected and specified by the establishing partner, the system comprising: means for inviting at least one member of the community to be a participating partner in the incentive program; means for the establishing party to select at least one performance indicator for each participating partner and to specify the minimum aggregated measure of performance and a financial consequence for the at least one selected indicator for a set of events defined by a time or event count period; means for the at least one member to accept an invitation and thus become at least one participating partner; means for collecting and storing data necessary to calculate an aggregated measure of performance of the at least one participating partner on the at least one selected performance indicator; means for analyzing the collected and stored data to generate an aggregated measure of performance for the time or event count period; and means for determining the financial credit or financial debit due to the at

least one participating partner for the time or event count period; wherein the at least one participating partner or the establishing party, or both, is a shipper, consignee or carrier participant in a transportation marketplace.

(see claim 1 discussion).

As per Claims 70,71:

Claim 70: Burk discloses: the at least one participating partner or the establishing party, or both, is a trucker or a carrier.

(see claim 1 discussion).

Claim 71: Burk discloses: at least one performance indicator comprises (a) on-time by location (versus appointment), (b) power dwell time by ship location, (c) trailer dwell times (turns) by drop location, or a combination thereof.

(see Burk paragraph 1772 via "Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time ", and FIG. 116 auditing and tracking performance of supply chain participant)

As per Claim 73:

A system for effectuating collaboration between one or many buyers and sellers, and their third party service providers in a supply community by operating an incentive program which enables an establishing partner to establish consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of

events defined by a time or event count period wherein the other partners, the performance indicators, the minimum level of performance required for each performance indicator, and the consequences for each performance indicator are selected and specified by the establishing partner, the system comprising: means for inviting at least one member of the community to be a participating partner in the incentive program; means for the establishing party to select at least one performance indicator for each participating partner and to specify the minimum aggregated measure of performance and a financial consequence for the at least one selected indicator for a set of events defined by a time or event count period; means for the at least one member to accept an invitation and thus become at least one participating partner; means for collecting and storing data necessary to calculate an aggregated measure of performance of the at least one participating partner on the at least one selected performance indicator; means for analyzing the collected and stored data to generate an aggregated measure of performance for the time or event count period; and means for determining the financial credit or financial debit due to the at least one participating partner for the time or event count period; wherein the performance indicator relates to the performance of a participating partner in relation to a third party; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace.

(see claim 1 discussion).

**4. Claims 7, 27, 52, 65, 68, 72 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burk, Michael James (Burk) (US 20030074250), in view of Eicher, Jr., Daryl E. et al. (Eicher) (US 20020099598).**

As per Claim 7:

Burk does not explicitly disclose the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved.

However Eicher discloses

the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved

(see Eicher paragraph 75 via “a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved to the system of Burk. One would have been motivated to do this in order to ensure partners maintain performance standards.

As per Claim 27:

Burk does not explicitly disclose the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved.

However Eicher discloses

the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved

(see Eicher paragraph 75 via “a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved to the system of Burk. One would have been motivated to do this in order to ensure partners maintain performance standards.

As per Claim 52:

Burk discloses a method carried out over the internet for effectuating one or more incentive programs between two or more partners in a supply community including one or more establishing partners and one or more participating partners to establish financial consequences that motivate the one or more participating partners in each

incentive program to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period, wherein the performance indicators, the minimum level of performance required for each performance indicator, and the financial consequence for each performance indicator in an incentive program are selected and specified by an establishing partner, the method including the steps of: providing an internet website for creating a supply community of potential partners for incentive programs; receiving at the internet website data pertaining to an incentive program from each establishing partner; outputting from the internet website invitations to participate in an incentive program; receiving from partners data indicating enrollment in an incentive program to thus become participating partners in the incentive program; recording and storing incentive program details at the internet website; collecting transaction data at the internet website; and gainshare credits in accordance with the incentive program at the internet website; outputting from the internet website financial results to the establishing and each participating partner; and settling debits and credits among partners in the incentive program via the internet website; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace.  
(see claim 1 discussion via Burk).

Burk does not explicitly disclose calculating KPI's.

However Eicher discloses calculating KPI's (see Eicher paragraph 12 and 18 for key performance indicators).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add calculating KPI's to the system of Burk. One would have been motivated to do this in order to monitor performance.

As per Claim 65:

Burk does not explicitly disclose the KPI's comprise shipping performance indicators comprising (a) on-time by location, (b) power dwell time by ship location, (c) trailer dwell times by drop location, or a combination including one or more of (a), (b) and/or (c).

However Eicher discloses the KPI's comprise shipping performance indicators comprising (a) on-time by location, (b) power dwell time by ship location, (c) trailer dwell times by drop location, or a combination including one or more of (a), (b) and/or (c). (see Eicher paragraph 12 and 18 for key performance indicators via "on time shipment").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the KPI's comprise shipping performance indicators comprising (a) on-time by location, (b) power dwell time by ship location, (c) trailer dwell times by drop location, or a combination including one or more of (a),

(b) and/or (c) to the system of Burk. One would have been motivated to do this in order to monitor performance.

As per Claim 68:

Burk discloses a method carried out via an internet website for effectuating one or more incentive programs between two or more partners in a supply community which enables a first partner (also known as an "establishing partner") to establish financial consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period wherein the one or more participating partners, the performance indicators, the minimum level of performance required for each performance indicator, and the financial consequence for each performance indicator are selected and specified by the establishing partner, the method including the steps of:

sending invitations from a plurality of establishing partners via an internet website hosted on a server to one or more members of a supply community to become one or more participating partners in incentive programs; receiving into the internet website a selection of at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period for each participating partner; receiving into the internet website a minimum level of performance for each of the at least one performance indicators in each incentive program, the performance indicators relating to performance in a truckload transportation marketplace; receiving, via the

internet, an acceptance of participation in an incentive program from at least one participating partner; and outputting from the internet website a financial credit or financial debit due to the each participating partner for the time or event count period in each incentive program; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace. (see claim 1 discussion).

Burk does not explicitly disclose receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program;

However Eicher discloses receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program

(see Eicher para 75 via “a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations”).

Burk does not explicitly disclose receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program;

However Eicher discloses

receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program

(see Eicher para 75 via "a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations").

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program to the system of Burk. One would have been motivated to do this in order to hold partners to high standards.

As per Claim 72:

Burk discloses a method carried out via an internet website for effectuating one or more incentive programs between two or more partners in a supply community which enables a first partner (also known as an "establishing partner") to establish financial consequences that motivate one or more other partners in each incentive program (referred to herein as one or more "participating partners") to achieve or exceed a minimum required level of performance on at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period wherein the one or more participating partners, the performance indicators, the minimum level of performance required for each performance indicator, and the

financial consequence for each performance indicator are selected and specified by the establishing partner, the method including the steps of:

sending invitations from a plurality of establishing partners via an internet website hosted on a server to one or more members of a supply community to become one or more participating partners in incentive programs; receiving into the internet website a selection of at least one performance indicator that measures aggregate performance for a set of events defined by a time or event count period for each participating partner; receiving into the internet website a minimum level of performance for each of the at least one performance indicators in each incentive program, the at least one performance indicator relating to the performance of a participating partner in relation to a third party;

receiving, via the internet, an acceptance of participation in an incentive program from at least one participating partner; and outputting from the internet website a financial credit or financial debit due to the each participating partner for the time or event count period in each incentive program; wherein at least one participating partner, or the establishing partner, or both, is a shipper, consignee or carrier in a transportation marketplace.

(see claim 1 discussion).

Burk does not explicitly disclose receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program.

However Eicher discloses

receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program

(see Eicher para 75 via “a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add receiving into the internet website a financial consequence to motivate a participating partner to achieve or the minimum required level of performance in each incentive program to the system of Burk. One would have been motivated to do this in order to hold partners to high standards.

As per Claim 75:

Burk does not explicitly disclose the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved.

However Eicher discloses

the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved

(see Eicher paragraph 75 via “a particular buyer requires in the agreement to have a per day penalty if the supplier fails to supply desired goods on a particular time, then that requirement is then extracted based on the negotiations”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the financial consequence includes a financial consequence unfavorable to the at least one participating partner when the minimum required level of performance is not achieved to the system of Burk. One would have been motivated to do this in order to hold partners to high standards.

**5. Claims 18, 37, 47, 60, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burk, Michael James (Burk) (US 20030074250), in view of Vemula, Chandrasekar et al. (Vemula) (US 20040172321).**

As per Claim 18:

Burk does not explicitly disclose the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the duration of the incentive program.

However Vemula discloses the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the duration of the incentive program

(see Vemula paragraph 35 via "The user may further specify obligations and rebates to be imposed in specific time periods". Hence the user/partner can reduce, increase or maintain the "specific" time periods).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Burk does not explicitly disclose the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the duration of the incentive program. One would have been motivated to do this in order to incorporate incentives with time limits.

As per Claims 37, 74:

Burk does not explicitly disclose the establishing partner lowers the time or event count period at anytime during the incentive program.

However Vemula discloses  
the establishing partner lowers the time or event count period at anytime during the incentive program.

(see Vemula paragraph 35 via "The user may further specify obligations and rebates to be imposed in specific time periods". Hence the user/partner can reduce, increase or maintain the "specific" time periods).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner lowers the time or event count period at any time during the incentive program to the system of Burk.

One would have been motivated to do this in order to incorporate incentives with time limits.

As per Claim 47:

Burk discloses the establishing partner selects a group of partners and all partners in the selected group of partners share a common attribute, the establishing partner selects partners from more than one group of partners, the financial consequence for a selected performance indicator may be more than or less than the cost savings realized by the establishing partner for each unit improvement in the at least one performance indicator, the at least one selected partner may elect to participate or not to participate in any incentive program and with any establishing partner (see Burk via claim 1 discussion).

Burk does not explicitly disclose the establishing partner can specify the time or event count period for each performance indicator for at least one selected partner, the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner, the establishing partner may change the time or event count period for a performance indicator at anytime provided the time or event count period is not longer than the incentive program, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for the selected incentive program.

However Vemula discloses

the establishing partner can specify the time or event count period for each performance indicator for at least one selected partner, the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner, the establishing partner may change the time or event count period for a performance indicator at anytime provided the time or event count period is not longer than the incentive program, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for the selected incentive program.

(see Vemula paragraph 35 via “The user may further specify obligations and rebates to be imposed in specific time periods”).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the establishing partner can specify the time or event count period for each performance indicator for at least one selected partner, the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner, the establishing partner may change the time or event count period for a performance indicator at anytime provided the time or event count period is not longer than the incentive program, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or count duration period for the selected incentive program to the system of Burk. One would have been motivated to do this in order to incorporate incentives with time limits.

As per Claim 60:

Burk does not explicitly disclose the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the incentive program.

However Vemula discloses

the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the incentive program.

(see Vemula paragraph 35 via "The user may further specify obligations and rebates to be imposed in specific time periods". Hence the user/partner can reduce, increase or maintain the "specific" time periods).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the one or more incentive programs each has a duration and wherein the establishing partner changes the time or event count period for a selected performance indicator during the incentive program, wherein the time or event count period is not longer than the incentive program to the system of Burk. One would have been motivated to do this in order to incorporate incentives with time limits.

**6. Claims 40-42, 46, 49, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burk, Michael James (Burk) (US 20030074250), in view of Eicher, Jr., Daryl E. et al. (Eicher) (US 20020099598), and further in view of Davidson, William A. (Davidson) (US 20050108043).**

As per Claim 40:

Burk discloses the system is modular in design and a data entry and management module, and incentive program creation and management module and an account management module.

(see Burk para 1270 for account management via “User may be responsible for setting up roles/responsibilities/permissions for Tier 2 Users in the account and company”, and Burk paragraph 2627 via “the management of the supply chain may include paying the selected distributors/suppliers rebates“ for incentive program).

Burk does not explicitly disclose the modules include a customer care module

However Davidson discloses  
the modules include a customer care module  
(see Davidson paragraph 31 via “[0031] Companies today are moving towards improving their channel and alliance relationships. They are creating metrics to track channel and alliance partner satisfaction. Typically, surveys are used to track some areas of the partner satisfaction“ for customer care/ customer satisfaction management).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the modules include a customer care module

to the system of Burk. One would have been motivated to do this in order to promote customer satisfaction.

As per Claim 41:

Burk discloses Burk discloses enrollment and training  
(see Burk paragraph 2218 for enrollment/invitation via “select distributors are invited to participate in developing a new business relationship that focuses on capturing the available opportunities in supply chain and distribution management, Burk paragraph 2490 for training via “Distributor employees are expected to be trained/retrained periodically on policies and procedures and their application. Distributors are to develop continuous training programs“).

the customer care module provides information for prospective partners, enrolls joining partners, and provides new partners with information, communication tools and training tools;

the master data entry and management module maintains the required and necessary master data about each business and locations;  
(see Burk FIG. 52 data aggregation).

the transaction module enters and manages the data that drives the performance and incentive modules; the performance module evaluates the performance of each participating partner against the key performance indicators;

(see Burk paragraph 1772 via “Such performance metrics include on time delivery, fill rate, perfect delivery, lead-time “, and FIG. 116 auditing and tracking performance of supply chain participant).

the incentive program creation and management module provides the partners with means to create and manage their own incentive programs;  
(See Burk FIG. 37 partner promotion).

and the account management module provides a monthly financial report and invoice for each partner.

(see Burk paragraph 2114 via “the DC's provide a monthly report of the number of cases sold and the number of Restaurants the product was sold to“ and 2429 via “Monthly Summary Invoices“).

As per Claim 42:

Burk and Vemula discloses the establishing partner selects a group of partners and all partners in the selected group of partners share a common attribute, the establishing partner selects partners from more than one group of partners, the financial consequence for a selected performance indicator may be more than or less than the net cost savings realized by the establishing partner for each unit improvement in the at least one performance indicator, the at least one participating partner must participate in all incentive programs with all establishing partners, the at least one selected partners may elect to participate or not participate in any incentive program with any establishing partner, the establishing partner can specify the time and event count period for each incentive for each other partner, the establishing partner can specify the time or event count period for each incentive for at least one selected partner, the establishing partner can specify the minimum required level of performance for a selected performance indicator with at least one selected partner, the establishing partner may change the

time or event count period at anytime provided that the time or event count period is not longer than the incentive program, and the establishing partner may discontinue an incentive program at anytime after the completion of the time or event count period for that incentive program.

(see claims 1, 18, 47 and 74 discussion via Burk and Vemula).

As per Claim 46:

Burk discloses the establishing partner and the at least one selected partner may be in the same corporate entity.

(see claim 2 discussion. It is known that a franchise establisher may choose to run a number of franchises themselves).

As per Claim 49:

Burk discloses the establishing partner and participating partners are members of a transportation marketplace.

(see Burk paragraph 600 via “FIG. 59 is a flowchart of a process 5930 for tracking the shipment of goods in a network-based supply chain management framework”. This invention deals with several types of supply chains, restaurant etc.. A restaurant franchise example involving shipping is White Castle, which has been known to ship burgers to college students).

As per Claim 51:

Burk discloses at least one performance indicator measures performance of the participating party in relation to third parties.

(see Burk para 2346 via "Coordinator shall have the sole and absolute right to designate methods, third party contractors and interpretation of performance audits").

### **Response to Arguments**

7. The applicant's arguments are moot in light of the new grounds of rejection above.

### **Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Henry whose telephone number is 571-270-5102. The examiner can normally be reached on Monday through Thursday from 7:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Namrata Boveja can be reached on 571-272-8105. The fax phone number for the organization where this application or proceeding is assigned is 571-270-6102. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call  
800-786-9199 (IN USA OR CANADA) or 571-272-1000

/RMH/

/Arthur Duran/

Primary Examiner, Art Unit 3682